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IN THE COURT OF APPEALS OF INDIANA

COREY D. BRAZELTON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 84A01-0606-CR-224
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE VIGO SUPERIOR COURT
The Honorable Michael H. Eldred, Judge
Cause No. 84D01-0505-FC-1236

March 29, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Corey D. Brazelton (Brazelton), appeals his convictions of Counts I through V for criminal recklessness, as a Class C felony, Ind. Code § 35-42-2-2(c)(3).

We affirm.

ISSUES

Brazelton raises four issues on appeal, which we reorder and restate as:

(1) Whether the trial court properly admitted into evidence a statement made by Brazelton;

(2) Whether the trial court erred in refusing to grant a mistrial after a juror fell asleep during the presentation of evidence;

(3) Whether the State presented sufficient evidence to convict Brazelton of five counts of criminal recklessness; and

(4) Whether the trial court properly sentenced Brazelton.

FACTS AND PROCEDURAL HISTORY

On May 7, 2005, Brazelton attended a "block party" near 300 Foulkes Drive in Terre Haute, Indiana. At the party, Brazelton encountered Ashley Wilson (Wilson), mother of two of his children, and her boyfriend, Eugene Akons (Akons). After Brazelton grabbed Wilson's arm to speak to her, a physical confrontation developed between Brazelton and Akons. Following the fight, Akons left the party and went to a duplex down the street. When Akons arrived at the duplex with friend, Steven Oglesby

(Oglesby), the two heard gunshots and observed Brazelton standing in the street shooting a gun. Another witness, Danielle Sanders (Sanders), also reported that she spoke with Brazelton in the street and saw him shoot an AK-47 three or four times. Akons and Oglesby ran to the backside of the duplex and Brazelton got into a vehicle and shot an additional round off the gun. The next day, another duplex resident, Crystal Catterson (Catterson), observed a hole in the front wall of her house.

On May 10, 2005, the State filed an Information charging Brazelton with Counts I through V, criminal recklessness, all as Class C felonies, I.C. § 35-42-2-2(c)(3), and Counts VI and VII, criminal recklessness, as Class D felonies, I.C. § 35-42-2-2(c)(2). Brazelton was not immediately arrested. Rather, on May 24, 2005, a Terre Haute police officer approached Brazelton who was sitting in a vehicle in an area known for break-ins. When asked for identification, Brazelton gave a false name and date of birth. Appearing valid, the police officer let him go. Shortly after, however, the police officer realized Brazelton's true identity. Another police officer then stopped Brazelton, confirmed his identity, and arrested him.

On March 13 to March 16, 2006, a jury trial was held. Brazelton was found guilty on Counts I through V, but not Counts VI and VII. On April 28, 2006, the trial court held a sentencing hearing and sentenced Brazelton to eight years in the Department of Correction on each of the five counts, however each term was to be served concurrently.

Brazelton now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Admission of Evidence*

First, we address Brazelton's argument that the trial court erred in admitting a statement he made to the arresting police officer when the officer had failed to read him his *Miranda* rights. Specifically, Brazelton contends that the trial court improperly admitted his statement to the arresting police officer that Akons and Oglesby "shot first." (Appellant's App. p. 23).

A trial court has broad discretion in ruling on the admissibility of evidence. *Washington v. State*, 784 N.E.2d 584, 587 (Ind. Ct. App. 2003). Accordingly, we will only reverse a trial court's ruling on admissibility of evidence when the trial court has abused its discretion. *Id*. An abuse of discretion occurs when a trial court's decision is clearly against the logical and effect of the facts and the circumstances before the court. *Id*.

As previously stated, Brazelton asserts that at the time he made the statement, he had not been advised of his *Miranda* rights, and therefore his statement was unlawfully obtained and should not have been admitted at trial. The Fifth Amendment provides that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law." U.S. Const. Amend V. Recognizing the critical values safeguarded by the Fifth Amendment, the U.S. Supreme Court in *Miranda v. Arizona*, 384 U.S. 436 (1966), announced broad prophylactic measures to protect citizens interrogated while in custody. *Furnish v. State*, 779 N.E.2d 576, 578 (Ind. Ct. App. 2002), *trans. denied*. *Miranda* requires defendants to be adequately informed of their right to remain silent, that their statements could be used against them at trial, of their right to an attorney, and that the State will appoint an

attorney for the defendant if he cannot afford one. *Id*. "Statements that are the product of custodial interrogation prior to the advisement of the Fifth Amendment guarantee against self-incrimination are generally inadmissible." *Id*. (quoting *Miranda*, 384 U.S. at 444).

Our review of the record does indeed show that the arresting officer, Michael Finney (Officer Finney), testified at the trial that he did not read Brazelton his *Miranda* rights upon taking him into custody. However, we note that a police officer is only required to give *Miranda* warnings when a defendant is both in custody and subject to interrogation. *Furnish*, 779 N.E.2d at 578. Here, while Officer Finney's testimony at trial indicates that Brazelton made statements to him as he was being arrested, there is no evidence to support that Brazelton made such statements as a result of interrogation. Rather, the record shows that Brazelton initiated conversation with Officer Finney by asking why there was an arrest warrant for him. Officer Finney's testimony then reveals that he explained the details of the arrest warrant to Brazelton, and that Brazelton then commented that he did not understand how there could be a warrant for him "when they shot first." (Transcript p. 233). However, Officer Finney testified that he did not ask any questions of Brazelton. Therefore, because there is no evidence of interrogation, we cannot find that Officer Finney violated Brazelton's *Miranda* rights. Thus, we conclude that the trial court did not abuse its discretion in admitting Brazelton's statement to Officer Finney.

II. *Juror Misconduct*

Next, we review Brazelton's claim that the trial court erred in not declaring a mistrial after a juror briefly fell asleep during the presentation of evidence. Specifically,

Brazelton argues that the trial court should have granted a mistrial based on the juror's conduct.

A mistrial is an extreme remedy warranted only when no other curative measure will rectify the situation. *Hyppolite v. State*, 774 N.E.2d 584, 597 (Ind. Ct. App. 2002), *trans. denied*. In our determination, we must consider whether the defendant was placed in a position of grave peril to which he should not have been subjected. *Id*. In the present case, there is not only zero evidence that Brazelton suffered any grave peril by one juror's brief sleepiness, but in addition the record shows that Brazelton never objected to the juror's conduct or even moved the trial court for a mistrial. *See Szpunar v. State*, 783 N.E.2d 1213, 1218 (failure to object at trial results in waiver of the issue on appeal). Furthermore, the trial court is in the best position to assess the impact of a particular event upon the jury. *Anderson v. State*, 774 N.E.2d 906, 911 (Ind. Ct. App. 2002). Thus, the decision to grant a mistrial is committed to its sound discretion and will only be reversed upon a showing of an abuse of that discretion. The record before us clearly shows that the trial court noticed the juror's inattentiveness and offered assistance in keeping him engaged in the presentation of evidence. For all these reasons, we conclude that Brazelton's argument as to juror misconduct fails entirely.

III. *Sufficiency of the Evidence*

Brazelton also argues that the State did not present sufficient evidence to convict him of five counts of criminal recklessness, all as Class C felonies. Our standard of review for a sufficiency of the evidence claim is well settled. In reviewing sufficiency of the evidence claims, we will not reweigh the evidence or assess the credibility of the

witnesses. *Cox v. State*, 774 N.E.2d 1025, 1028-29 (Ind. Ct. App. 2002). We will consider only the evidence most favorable to the judgment, together with all reasonable and logical inferences to be drawn therefrom. *Alspach v. State*, 775 N.E.2d 209, 210 (Ind. Ct. App. 2001), *trans. denied*. The conviction will be affirmed if there is substantial evidence of probative value to support the conviction of the trier of fact. *Cox*, 774 N.E.2d at 1028-29.

Brazelton was charged and convicted of five counts of criminal recklessness as Class C felonies under I.C. § 35-42-2-2, which provides in pertinent part that a person who recklessly, knowingly, or intentionally performs an act that creates a substantial risk of bodily injury to another person commits criminal recklessness. I.C. § 35-42-2-2(c)(3). The statute further states that the offense is a Class C felony if it is committed by shooting a firearm into an inhabited dwelling or other building or place where people are likely to gather. *Id*.

Brazelton now asserts that the State presented no evidence that his shooting of the firearm posed any substantial risk of bodily harm to persons in the area. We disagree. Our review of the record shows that several people witnessed Brazelton firing rounds from his gun, from inside and outside of his vehicle on a residential street. At trial, duplex neighbor, Catterson, testified that she was awakened that night by yelling and a gunshot that felt like it hit her house. Even though police officers were not able to recover a bullet, the record indicates that a hole was found in the front wall of Catterson's house the next day. Furthermore, Catterson testified that on that evening, eight children were asleep in her house, three of them in the main front room. Thus, we conclude that

the State undoubtedly presented sufficient evidence that Brazelton's use of a gun posed a substantial risk of bodily harm to those inside the Catterson residence, as well as those outside on the street. Any viable argument to the contrary by Brazelton would require that we reweigh the evidence in this case, which we will not do. *See Cox*, 774 N.E.2d at 1028-29.

IV. *Sentence*

Finally, we review Brazelton's contest of his concurrent eight-year sentences in the Department of Correction for each of the five counts of criminal recklessness. Specifically, Brazelton disputes the trial court's imposition of the maximum sentence, eight years, for a Class C felony, based upon his criminal history.

Brazelton was sentenced under Indiana's new advisory sentencing scheme, which went into effect on April 25, 2005. Under this scheme, "Indiana's appellate courts can no longer *reverse* a sentence because the trial court abused its discretion by improperly finding and weighing aggravating and mitigating circumstances." *McMahon v. State*, 856 N.E.2d 743, 748-49 (Ind. Ct. App. 2006) (emphasis added). Thus, appellate review of sentences in Indiana is now limited to Appellate Rule 7(B). *Id*. As such, the burden is on the defendant to persuade this court that his or her sentence is inappropriate. *Id*. at 749. Nonetheless, an assessment of aggravating and mitigating circumstances is still relevant to our review under Rule 7(B), which provides: "The [c]ourt may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the [c]ourt finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender. *Id*. at 748-49.

We are not persuaded that Brazelton's sentence is inappropriate. The actions surrounding this crime were of a very reckless and violent nature. Not only did Brazelton physically confront Akons, but in addition he fired a weapon several times into a public and residential street where people are likely to gather. In our view, his actions show no regard for human life whatsoever. A review of the record also shows that since October of 1995, Brazelton has been involved with more than twenty run-ins with the criminal legal system, resulting in convictions for more than ten misdemeanors and at least one felony. Therefore, nothing about Brazelton's character prompts us to revise his sentence. Accordingly, we hold that the trial court properly sentenced Brazelton.

CONCLUSION

Based on the foregoing, we conclude that the trial court properly admitted Brazelton's statement into evidence and properly failed to declare a mistrial based on juror misconduct. In addition, we conclude that the State presented sufficient evidence that Brazelton committed criminal recklessness, and that the trial court properly sentenced him.

Affirmed.

KIRSCH, J., and FRIEDLANDER, J., concur.